IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5002 OF 1995

Smt.Anandibai Narayan Bhakre
Age Adult, Occup.Household
Resident of Palspe, Tal-Panvel,
District Raigad .. Petitioner.
Vs.
Sou.Sunita Sharad Deodhar
Age Adult, C/o.Dhamankarwada
Palspe, Tal-Panvel,
District Raigd .. Respondent.

Shri Sachin Chavan h/f Shri S.S.Kulkarni for the petitioner.
Ms.Alpa Jhaveri h/f Mrs.Teja Katdare for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 18TH MARCH, 2005

ORAL JUDGMENT:

. This petition is directed against the judgment and order dated 31.3.1995 passed by Joint Civil Judge, Junior Division, Panvel in Regular Civil Suit No.132 of 1992 dismissing the said suit filed by the petitioner. The suit was filed under section 6 of the Specific Relief Act.

2. The case set up by the petitioner is that she alongwith her husband were in possession of the suit premises bearing Gram Panchayat House No.193(b) consisting of two rooms. They were

inducted by one Daya Paranjpe, the landlady, as tenants on monthly rent of Rs.50/-. They stayed in the suit premises for more than 20 years. The petitioner's husband was a teacher, who got retired sometime in 1987. After his retirement he was suffering for some ailment for which she often had to visit Panvel at her son's residence for treatment of her husband. It is further contended that when she was at Panvel for the treatment of her husband sometime in May-June 1992, the landlady took forcible possession of the suit premises by breaking open the lock and removing her belongings from the suit premises. She noticed dispossession for the first time on 21.7.1992 when she visited the suit premises after the death of her husband, who died on 1.6.1992. She immediately lodged police complaint at Panvel police station. The police called the landlady where the landlady, according to the petitioner, made a statement that if the petitioner withdrew the complaint she would accept her as a tenant and induct her in the suit premises. It is on this assurance she did not pursue the complaint further. However, since she was not put in possession of the suit premises, she filed the instant suit for possession under section 6 of the Specific Relief Act.

3. It appears that ownership of the property was transferred by Daya Paranjpe to Sunita Deodhar, against whom the suit was filed. It is the contention of the respondent that in 1987 itself the suit property was surrendered by the husband of the petitioner and they shifted to Panvel. It was further contended that when she purchased the property from Daya Paranjpe in 1991 the suit premises was vacant and, therefore, she has denied the allegation that she took forcible possession without following the due process of law from the petitioner.

4. Mr.Chavan, learned counsel for the petitioner vehemently submitted that even if it is assumed that the petitioner got her ration card transferred to Panvel and their names from the voter’s list at village Palspe were deleted that would at the most show that the premises were lying vacant for quite sometime and not surrendered, as contended by the respondent. He further submitted that even if it is accepted that the petitioner and her husband shifted to Panvel, that does not mean they surrendered the premises. That would at the most provide a ground of non-user to the landlord for seeking possession of the premises. The transfer of ration card and deletion

of the names from voter's list would not amount surrender of the lease. There is absolutely no evidence on record to show that in fact the premises were surrendered either to Smt.Paranjpe or to the respondent - landlady - Deodhar. In short, he submitted that this is a clear case of dispossession without following the due process of law.

5. I perused the judgment and other material placed on record. It is not disputed that husband of the petitioner retired in 1987. Their son was settled at Panvel. The record reveals that after 1987 no rent receipts were issued by the landlady in favour of the petitioner's husband. No material whatsoever is placed on record to support the contention that the petitioner and her husband continued to be in possession of the suit premises even after 1987 until 21.7.1992. As a matter of fact the conduct of the petitioner and her husband supports the contention of the respondent that after 1987 they shifted to Panvel by surrendering the suit premises to earlier landlady. Admittedly the ration card was transferred at their Panvel address. The name of the petitioner and her husband was deleted from voters' list. Even if it is assumed that there was no surrender, it is not

clear as to when the petitioner lost possession of the suit premises. It is also not clear whether she was dispossessed by the original landlady - Paranjpe or by subsequent landlady - Deodhar. No specific case is made out by the petitioner as to when she was dispossessed and who dispossess her. She has stated on 21.7.1992 for first time she found someone else in the suit premises and realised that she had been disposed forcibly. The trial Court after considering entire material on record has rightly recorded its finding on the first issue that the petitioner was not in possession till 21.7.1992. In view thereof and in the absence of evidence to establish that the petitioner was dispossessed from the suit property illegally by the landlady, I find absolutely no reason to interfere with the impugned judgment under Article 227 of the Constitution of India. Insofar as other issues are concerned, in view of my finding on first two issues I find no ground and reason to enter into that controversy. The writ petition, accordingly, stands dismissed. No order as to costs.

(D.B.Bhosale, J.)